

**REMARKS**

Claims 1-16 are pending and stand rejected. Claims 1, 3 and 15-16 are rejected under 35 U.S.C. § 102(e) over Gallagher, U.S. Patent No. 6,523,112. Claims 2 and 4-14 are rejected under 35 U.S.C. § 103(a) over Gallagher in view of Itoh, U.S. Patent No. 6,795,912. In addition, claims 2 and 5-7 are objected to because of informalities. Also, the title has been objected to.

By this Amendment, Applicant amends claims 2, 5, 7, 9, 11-12 and 15-16, cancels claims 1, 3, 6, 8, 10, and 13, amends the title of the invention, and traverses the rejections. Reconsideration is respectfully requested.

In paragraph 2 of the Office Action, claims 2 and 5-7 are objected to because of informalities. Applicant has amended the claims in accord with the Examiner's suggestion. Withdrawal of the objections to the claims is thus respectfully requested.

In paragraph 3 of the Office Action, the title of the invention has been found not to be descriptive. Applicant has amended the title to be descriptive. Applicant respectfully requests that the objection to the title be withdrawn.

For the benefit of the Examiner, Applicant wishes to point out that limitations of canceled claim 1 have been incorporated into claim 2.

In paragraph 4-8 of the Office Action, claims 1, 3 and 15-16 are rejected under § 102(e) over Gallagher. Also, in paragraphs 10-16 of the Office Action, claims 2 and 4-14 are rejected under § 103 over Gallagher in view of Itoh. Applicant traverses for the following reasons.

The Office Action at page 4 acknowledges that Gallagher “does not discuss a second operating system.” Independent claims 2, 15 and 16 of the present invention claim “stop[ping] start-up of [the] first operating system [ ] before [a] second operating system is started up.” Thus, each independent claim requires a second operating system. As a result, these claims are patentable under § 102 over Gallagher.

Further, the pending claims are patentable under § 103 over Gallagher in view of Itoh. One of skill in the art would have had no motivation to combine Gallagher and Itoh at the time of the invention, and the attempt to combine them is impermissible hindsight.

The Office Action improperly states that: “It would have been obvious to one of ordinary skill in the art, having the teachings of Gallagher and Itoh before him at the time the invention was made, to modify the apparatus taught by Gallagher to include the teachings of Itoh, in order to obtain the information processing apparatus wherein said program comprises a stopping routine *which stops start-up of a second operating system.*” (Page 4, line 16 – page 5, line 1, emphasis added.) But Gallagher, as the Office Action acknowledges, does not show a *second operating system*. Thus, no one at the time of the invention would have used Itoh to show stopping the starting-up of a *second operating system*. The only basis for thus modifying Gallagher to include Itoh is to obtain Applicant’s disclosure. This is impermissible hindsight. M.P.E.P. § 2142.

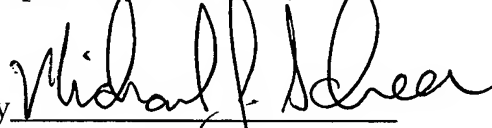
Thus, independent claims 2, 15 and 16 are patentable under § 103 over Gallagher and Itoh. Because the independent claims are patentable, the claims dependent thereon are likewise patentable. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” M.P.E.P. § 2143.03, quoting In re Fine, 837 F.2d 1071 (Fed. Cir. 1988).

As a result, then, independent claims 2, 15 and 16, and the claims patentable thereon, are patentable under § 102 over Gallagher alone and under § 103 over Gallagher in view of Itoh. In view of the above, withdrawal of the rejections of independent claims 2, 15 and 16, and claims 4-5, 7, 9, 11-12 dependent thereon, is respectfully requested.

Applicant has shown that pending claims 2, 4-5, 7, 9, 11-12 and 15-16 are patentable over the cited art. Further, Applicant has amended the title and claims to overcome the objections thereon. In view of the above, all pending claims are in a condition for allowance and such action is earnestly solicited.

Dated: February 4, 2005

Respectfully submitted,

By 

Michael J. Schedr

Registration No.: 34,425

DICKSTEIN SHAPIRO MORIN &  
OSHINSKY LLP

1177 Avenue of the Americas

41st Floor

New York, New York 10036-2714

(212) 835-1400

Attorney for Applicant

MJS/AJH/rra